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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,673	10/05/2001	Kenneth John Molee	53394.000525	1835

7590 11/05/2002

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/970,673

Applicant(s)

MOLEE, KENNETH JOHN

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the film surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perdelwitz, Jr. et al. (5,968,855) in view of Ahr et al. (4,323,069).

Perdelwitz discloses all aspects of the claimed invention with the exception of an apertured film disposed between the inner layer and the absorbent core. Perdelwitz discloses an absorbent article 10, as shown in figure 1, comprising a liquid impervious outer layer 12, a liquid pervious inner layer 16, and an absorbent core 14. The absorbent article has a 300 mL rewet under load of less than 1.25 g, as disclosed in

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column 9, lines 23-45 and table 2. It therefore follows that the rewet under load for only 200 mL would inherently be less than 1.25 g as well.

Ahr discloses an absorbent article 10, as shown in figure 2, comprising a liquid impervious outer layer 14, a liquid pervious inner layer 12, and an absorbent core 16. The absorbent article 10 further comprises an aperture film 40 disposed between the inner layer 12 and the absorbent core 16, as disclosed in column 11, lines 35-38. The apertured film 40 comprises a liquid impermeable film surface and a plurality of protrusions extending towards the absorbent core 16, each protrusion terminating in a aperture 46, as shown in figure 5. The addition of the apertured film 40 improves the rewet value of the absorbent article 10 without reducing the strikethrough time, as disclosed in column 12, lines 58-62.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the absorbent article of Perdelwitz with the apertured film of Ahr, in order to further reduce the rewet of the absorbent article without also reducing the strikethrough time.

With respect to claim 2, Ahr discloses a tissue layer 36 surrounding the absorbent core 16 and apertured film 40, as shown in figure 2.

With respect to claim 3, the absorbent article of Perdelwitz further comprises a transfer layer 18 disposed between the inner layer 16 and absorbent core 14, as shown in figure 1.

With respect to claims 4 and 5, the apertured film 40 of Ahr covers substantially all of a surface of the absorbent core 16 and its insult region, as shown in figure 2.

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With respect to claim 6, the protrusions of the apertured film 40 of Ahr extend substantially orthogonal to the liquid impermeable film surface, as shown in figure 5.

With respect to claim 7, the protrusions of the apertured film 40 of Ahr are substantially circular, as shown in figure 5.

With respect to claims 8 and 9, the apertured film 40 of Ahr discloses in column 11, lines 61-68, the incorporation by reference of Thompson (3,929,135). Thompson discloses an apertured film having protrusions that are substantially polygonal and rectangular, as disclosed in column 3, lines 46-50.

With respect to claim 10, the area of each protrusion of the apertured film 40 of Ahr is less at the aperture 46 than at the liquid impermeable film surface, as shown in figure 5.

With respect to claims 11-13, the apertured film 40 of Ahr discloses in column 11, lines 61-68, the incorporation by reference of Thompson (3,929,135). Thompson discloses an apertured film having a loft of between 0.08 mm and 4.04 mm, as described in, column 4, lines 58-60.

With respect to claims 14-16, the term "porosity" used in the claims to mean something able to be measured in units of  $m^3_{air}/min\ m^2_{film}$ . However, the term has an accepted meaning of "a state of being porous" or "the ratio of the volume of interstices of a material to the volume of its mass." Under the accepted definition of the term "porosity", Ahr discloses the claimed invention. Ahr discloses a film 40 which is apertured, and therefore porous.

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With respect to claims 17-19, Perdelwitz discloses a drain rate for the absorbent article, as disclosed in column 9, lines 23-34, but remains silent as to the drain rate for a square meter of the apertured film 40. It would have been obvious to one of ordinary skill in the art at the time of invention to construct the apertured film of Perdelwitz with a drain rate of between about  $597 \text{ kg/s m}^2_{\text{film}}$  and about  $995 \text{ kg/s m}^2_{\text{film}}$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 20-23, the absorbent article of Perdelwitz has a 300 mL rewet under load of less than about 0.56 g, as disclosed in column 9, table 2, and therefore has a 200 mL rewet under load of less than about 0.56 g, as well.

With respect to claims 24-26, the absorbent article of Perdelwitz has a rewet value that meets the limitations of the claim. The rewet value is a measure of the amount of liquid that remains on the surface of the absorbent article during the rewet test, and is essentially a measure of the surface wetness. If the absorbent article of Perdelwitz meets the limitations pertaining to the rewet value, it inherently meets the limitations pertaining to the surface wetness.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 4,282,874 pertains to an absorbent article having an apertured film rewet barrier.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

CVA

cla

November 1, 2002



DENNIS RUHL  
PRIMARY EXAMINER